evidence before me, prepared to make any finding. It is, however, a most material point in considering whether the vessel was scuttled and whether the cargo interests were privy to the scuttling.

Again there was the apparent unconcern shown by the plaintiffs over the packing of the goods. Although Koh Cho Phua, the managing director of Bian Guan & Co., swore in his answers to interrogatories that he supervised the packing of all the cases, it transpired at the trial that the supervision was of but 5 minutes duration and he never saw the cases packed at all.

Lim Hong Ngiap appears to have been equally unconcerned and it was only after some time and with considerable reluctance that he was forced to admit his connection with 128-9 Cairnhill Road, where he once resided, the address of International Export Agencies, the sole proprietor of which is Lim Teck Khoon, his brother-in-law from whom he alleged he purchased the electrical equipment. As I have already remarked, no books of any description have ever been produced by International Export Agencies and despite the relationship between them, Lim Teck Khoon has not been called, is not prepared apparently to give evidence voluntarily on behalf of his brother-in-law and all attempts to serve him with a subpoena have proved abortive and he has for the time being disappeared.

These are but some of the matters to which reference should properly be made and the question arises, as always, in cases such as this, whether the facts of the case taken as a whole render the general inference proper to be drawn from these facts so irresistible that the matter, though not established by direct evidence, has escaped from the atmosphere of reasonable doubt.

Mr. Christopher has conceded that the circumstances here give rise to suspicion only — even strong suspicion. Has the matter in issue here escaped from the realms of suspicion into proof beyond a reasonable doubt? In this case I cannot doubt that it has.

The cumulative effect of all these circumstances taken as a whole, is so irresistible, that it has led me to the conclusion beyond a reasonable doubt that the plaintiffs and Heng Thong Trading Company were privy to the casting away of the "Kien Kung".

I think I should add that with regard to suit No. 660 of 1963 the fact that the cases shipped on board the "Kien Kung" containing brand new tractor spare parts as alleged has not, in my view, been sufficiently proved and on that additional ground also, in so far as the plaintiffs in that suit are concerned, their claim fails.

In the result, the defendants are entitled to judgment in each of the three suits and the plaintiff's claims in each case must be dismissed with costs.

Claims dismissed.

Solicitors: *Allen & Gledhill; N. A. Christopher; Drew & Napier.*

GOH BOK SENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) March 10, 1965]

[Singapore — Magistrate's Appeal No. 32 of 1964]

Penal Code, s. 148 — Rioting — Sentence.

Criminal Procedure — Sentence — Appeal for leniency — Alleged defect in character — No previous conviction.

The appellant was convicted on his own plea of guilty 'of rioting under section 148 of the Penal Code. After his appeal for leniency in mitigation the prosecutor informed the magistrate that although he had no previous conviction he was a fighter in a secret society. He was sentenced to 4 months' imprisonment.

Held: the statement by the prosecutor was entirely irrelevant in so far as sentence was concerned. Sentence reduced to 3 months imprisonment.

MAGISTRATE'S APPEAL.

The accused was charged as follows:—

"You are charged that you on or about 11.11.63 at about 11.00 p.m. at Jalan Afifi, Singapore, were members of an unlawful assembly and did in prosecution of the common object of that assembly, to wit, to cause hurt to one Goh Ah Hock and Koh Ah Bah committed the offence of rioting, and at the time of committing the said offence, you were armed with deadly weapons, to wit, a parang, an iron rod and a stick and thereby committed an offence punishable under section 148 of the Penal Code, Cap. 119."

He pleaded guilty and the facts were recorded and admitted without qualifications. He was then convicted.

The following day when he appeared for sentence, the learned magistrate recorded as follows:

"*Injuries:*

(1) Goh received 2½" laceration on right side of head.

(2) Koh received

(a) 1" laceration on forehead,

(b) ½" laceration on left shin,

(c) scattered abrasions on right arm,

(d) abrasion on left knee and

(e) small laceration beside the right eye.

Goh's and Koh's injuries are consistant with blows from sharp-edge objects.

Mitigation: Leniency.

No previous conviction but Secret Society (Group 18) 'Chean Gi Ho' fighter. Admitted.

Convicted and sentenced 4 months imprisonment."

In his grounds of decision the learned magistrate said:

"I am of the view that offences of this nature are among the worst of the offences against the person and people who indulge in it are savages who deserve no mercy as they have shown no mercy to the people they have attacked. It is absolutely no mitigation to say that this is the appellant's first offence. The act shows a callous disregard of the consequences which may even be death to the victims.

Although he had no previous conviction, the appellant admitted that he was a fighter in the Group 18 'Chean Gi Ho' Secret Society. Having regard to all the circumstances of the case, I felt strongly that a severe penalty was called for. I decided that a sentence of four months' imprisonment was a fair and suitable punishment."

S. K. Lee for the appellant.

Francis T. Seow (Senior Crown Council) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): I can only go on the record. The appellant was charged under section 148 of the Penal Code, that is the rioting section, convicted on his plea of guilty and sentenced to imprisonment for four months.

The facts outlined to the magistrate were admitted by him and so far as I am concerned I am in no position to receive evidence other than those that appear on the record as regards the facts of the case.

The only thing that has troubled me of course is the fact that after he had appealed for leniency in mitigation the prosecutor would have appeared to inform the magistrate that although he had no previous conviction he was a fighter in a secret society. That to my mind is entirely irrelevant in so far as sentence is concerned and in his grounds of decision the learned magistrate has referred to that alleged defect in his character and it would appear to have affected him in his assessment of the sentence to be im posed.

I would therefore allow the appeal to the extent that the sentence is reduced to three months' imprisonment.

Sentence reduced.

RE YEOW HEAP SENG
Ex parte THE OFFICIAL ASSIGNEE

[O.Bk.J. (Choor Singh J.) March 13, 1965]

[Singapore — In Bankruptcy No. 73 of 1963]

Bankruptcy — Fraudulent conveyance to defraud creditors — Subsequent bankruptcy of vendor — Validity of conveyance — Doctrine of relation back — Whether act of bankruptcy related back to date of signing fraudulent conveyance — Bankruptcy Ordinance (Cap. 11), ss. 3, 46, 47, 51 and 53.

Mortgage — Sale of property under — Purchase price utilised to discharged — Purchaser entitled in equity.

L mortgaged his shophouse to the Bank of Singapore on August 12, 1960 to secure his firm's overdraft on its current account with the bank up to a limit of $22,000. The firm was in serious financial difficulties in February 1963. *L* then consulted one *Y* for the sale of the mortgaged property in order to pay the bank's overdraft. On February 7, 1963 an agreement for sale of the mortgaged property for $30,000 was entered into by *L* and one *T* and on February 22, 1963 *L* signed the assignment in escrow transferring the property to *T* pending the completion of the reconveyance by the bank. The reconveyance was executed by the bank on March 2, 1963 and the sale by *L* to *T* was completed on the same date. An order was made against the firm on April 19, 1963 and adjudication orders were made against *L* and *S* as partners of the firm on June 14, 1963. The third partner one *H* was adjudicated a bankrupt on June 21, 1963.

The official assignee now applied by way of motion for a declaration that the assignment to *T*, the respondent herein, dated March 2, 1963 was void on the grounds that it was not made in good faith or for valuable consideration and that the assignment was an act of bankruptcy because it was fraudulent, that *L's* bankruptcy related back and that his property divisible among his creditors included the shophouse.

Held: (1) the evidence clearly indicated that the respondent accepted the assignment with full knowledge that the sole reason which induced *L* to sell was to delay, hinder or defeat his creditors. Therefore *T* cannot be said to have acted in good faith when the assignment was made to him, and the assignment was accordingly absolutely void against the official assignee under section 51 of the Bankruptcy Ordinance;

(2) *T* did not act in good faith and was therefore not entitled to the protection of section 53 of the Bankruptcy Ordinance;

(3) as *L* was adjudicated a bankrupt on June 14, 1963 the bankruptcy was under section 46 of the Bankruptcy Ordinance deemed to have relation back to and to commence at the time of the first act of bankruptcy proved to have been committed within 6 months next proceeding the date of the presentation of the bankruptcy petition. The bankruptcy petition was presented on March 21, 1963 and the first act of bankruptcy committed within 6 months preceeding that date was the execution of the assignment on February 22, 1963 and the bankruptcy commenced on that date and under section 47 the property of the bankrupt divisible among his creditors included his equitable interest in the shophouse;

(4) when property under a mortgage is sold and a portion of the purchase price is utilised to discharge the mortgage, the purchaser of the property is entitled in equity to be treated as a mortgagee in respect of the mortgage debt paid out of the purchase money, if the sale is, subsequently, set aside and the purchaser is deprived of the property purchased by him. Applying this principle *T* was entitled to recover from the official assignee the sum of $23,594.44 which was the amount paid to the mortgagee bank out of the purchase price of $30,000 provided by *T;*

(5) *T* was not precluded from claiming the sum of $23,594.44 from the official assignee although it was part of the purchase price of $30,000 which was provided by him in pursuance of an illegal transaction, because there was nothing illegal about the purchase of the bank's legal estate in the shophouse.